

Brown & Williamson vs. Wigand
Volume 8

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Gen 58-B(5)(1)(F)
7/18/96

JEFFERSON CIRCUIT COURT

1166

DIVISION NINE

BROWN & WILLIAMSON :
TOBACCO CORPORATION, :
Plaintiff, :
vs. : Case No. 95-CI-06560
JEFFREY S. WIGAND :
Defendant. :

The videotaped deposition of
Jeffrey S. Wigand, the Defendant herein,
was taken before Special Commissioner
Richard A. Revell, and reported by Thomas
F. Runfola, a Registered Professional
Reporter, pursuant to notice, at the
offices of Middleton & Reutlinger, 2500
Brown & Williamson Tower, Louisville,
Kentucky, on Thursday,
July 18, 1996, at 1:14 o'clock p.m.

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<p>1 APPEARANCES</p> <p>2 Middleton & Reutlinger 401 South Fourth Avenue 2102 Brown & Williamson Tower Louisville, Kentucky 40202 By Mr. James E. Williams.</p> <p>3 AND</p> <p>4 King & Spalding 111 Peachtree Street Atlanta, Georgia 30303 By Mr. Gordon A. Smith and Mr. William C. Hendricks, III.</p> <p>5 AND</p> <p>6 Chadbourne & Paros 30 Rockefeller Plaza New York, New York 10012 By Mr. David L. Wallace, and Mr. Bruce G. Sheffield</p> <p>7 AND</p> <p>8 Parker & O'Connell Suite 1510 Provident Center 400 West Market Street Louisville, Kentucky 40202 By Mr. Michael J. O'Connell.</p> <p>9 On behalf of the Plaintiff.</p> <p>10 Motley, Johnson & Sevin Suite 400 710 West Main Street Louisville, Kentucky 40202 By Mr. Joseph V. Motley.</p> <p>11 AND</p>	<p>1 INDEX</p> <p>2 EXAMINATION</p> <p>3 Page</p> <p>4 By Mr. Sheffield 1170</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>1 Shoo & CARMER 1800 Massachusetts Avenue, N.W. Washington, DC 20036 By Mr. John D. Alcock and Mr. Laure S. Wertheimer</p> <p>2 On behalf of the Defendant.</p> <p>3 ALSO PRESENT:</p> <p>4 U.S. Department of Justice Criminal Division, Fraud Section 1400 New York Avenue, N.W. Washington, DC 20035 By Mr. Jimmy B. HARTON</p> <p>5 AND</p> <p>6 Brown & Williamson Tobacco Corporation 2400 Weaver Road P.O. Box 1056 Hacon, Georgia 31298 By Scott Appleton, Ph.D.</p>	<p>1 JEFFREY S. WIGAND,</p> <p>2 having been previously sworn, as hereinafter</p> <p>3 certified, deposes and says as follows?</p> <p>4 EXAMINATION</p> <p>5 THE VIDEOGRAPHER: Going on the</p> <p>6 record. The time is approximately 1:14.</p> <p>7 BY MR. SHEFFLER:</p> <p>8 Q. Mr. Wigand, did you meet or did</p> <p>9 you see Mr. Motley during the lunch hour?</p> <p>10 A. No, I did not.</p> <p>11 Q. Did you see anyone who works</p> <p>12 with Mr. Motley during the lunch hour?</p> <p>13 A. Did I see anybody that works</p> <p>14 with Mr. Motley? What do you mean by</p> <p>15 anybody?</p> <p>16 Q. Any person.</p> <p>17 A. You mean that's an employee of</p> <p>18 Mr. Motley?</p> <p>19 Q. Did you see any person who works</p> <p>20 with or is associated with Mr. Motley</p> <p>21 during lunch?</p> <p>22 A. Did I see, yes.</p> <p>23 Q. Who was that?</p> <p>24 A. Kelly Boyle.</p>

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<p style="text-align: right;">Page 1171</p> <p>1 Q Anyone else?</p> <p>2 A And I believe I saw Cathy</p> <p>3 McGregor.</p> <p>4 Q Did you discuss with them your</p> <p>5 testimony in this case?</p> <p>6 A No, I did not.</p> <p>7 Q Did you discuss with them</p> <p>8 anything about this case?</p> <p>9 A No, I did not.</p> <p>10 Q Sir, we have talked before the</p> <p>11 lunch break about the research that was</p> <p>12 conducted at FRC and that was abstracted</p> <p>13 and sent to you during the bi-annual</p> <p>14 reports; do you recall that?</p> <p>15 A Yes, I do.</p> <p>16 Q And we also talked about the</p> <p>17 research that you could call someone at</p> <p>18 the U.K. and have sent to you; do you</p> <p>19 recall that?</p> <p>20 A I recall that.</p> <p>21 Q Now, sir, it is not true, is it,</p> <p>22 that Kendrick Wells edited, or anyone at</p> <p>23 the Legal Department of B & W edited,</p> <p>24 scientific research. That is not true, is</p>	<p style="text-align: right;">Page 1173</p> <p>1 your Honor, was that there was research</p> <p>2 reports from England that were, from</p> <p>3 Southampton that were edited or somehow --</p> <p>4 THE COURT: He mentioned other</p> <p>5 places he got reports from too, and I'm</p> <p>6 asking if your question is confined just</p> <p>7 to Southampton.</p> <p>8 MR. SHEFFLER: I'm asking about</p> <p>9 research, scientific research reports,</p> <p>10 judge, from anywhere.</p> <p>11 THE COURT: From anywhere.</p> <p>12 Q Now, is it your contention, sir,</p> <p>13 that Mr. Wells had scientific reports of</p> <p>14 research, and again, scientific reports of</p> <p>15 research is similar to the reports of</p> <p>16 research you were getting from the U.K.,</p> <p>17 correct?</p> <p>18 A But much more extensive, yes.</p> <p>19 Q Okay. You got summaries from</p> <p>20 the U.K. and you could, of course, get the</p> <p>21 data from the U.K. as we talked about</p> <p>22 before?</p> <p>23 A Yeah, I could get the data from</p> <p>24 the U.K. but through different sources,</p>
<p style="text-align: right;">Page 1172</p> <p>1 it, sir?</p> <p>2 A That is true.</p> <p>3 Q Sir, can you name a single</p> <p>4 report for me that Kendrick Wells edited?</p> <p>5 A single scientific research study report.</p> <p>6 A I can give you the Kendrick --</p> <p>7 the editing of the Vancouver meetings. I</p> <p>8 would consider that a <i>scientific meeting</i>.</p> <p>9 Q Sir, I didn't ask about</p> <p>10 meetings. My question was directed to</p> <p>11 reports, scientific reports of research.</p> <p>12 Do you know what a scientific report of</p> <p>13 research is?</p> <p>14 A Um-hum.</p> <p>15 Q It's the type of thing that you</p> <p>16 got from the FRC on a regular and</p> <p>17 continual basis; is it not?</p> <p>18 A The abstracts and general</p> <p>19 summaries.</p> <p>20 Q Right.</p> <p>21 THE COURT: Can we clarify? Are</p> <p>22 you speaking just from England or from any</p> <p>23 source? Because I think he has named --</p> <p>24 MR. SHEFFLER: The allegation,</p>	<p style="text-align: right;">Page 1174</p> <p>1 yes.</p> <p>2 Q But you could get it delivered</p> <p>3 to you directly at B & W?</p> <p>4 A I couldn't get all data</p> <p>5 delivered to me at B & W.</p> <p>6 Q Name the study that you could</p> <p>7 not get delivered to you at B & W.</p> <p>8 A I cannot recall a specific study</p> <p>9 but it was generally in the area of</p> <p>10 nicotine, smoking and health issues, that</p> <p>11 were considered contentious.</p> <p>12 Q Sir, were those reports included</p> <p>13 in the FRC in summary fashion?</p> <p>14 A Some of those -- yes, those</p> <p>15 reports -- some of those reports were</p> <p>16 enclosed in the FRC general reports; that</p> <p>17 is the summaries, yes.</p> <p>18 Q Do you have them in front of</p> <p>19 you, sir? Can you show us an example of a</p> <p>20 report where you tried to get the original</p> <p>21 report and you were foreclosed from doing</p> <p>22 so?</p> <p>23 A Show in here a specific report?</p> <p>24 Q Look, your claim is that there</p>

<p>Page 1175</p> <p>1 were reports that you called up and asked 2 for and you didn't get. As I understand 3 it. That's your claim, isn't it? 4 MR. ALDOCK: Objection; that's 5 not his claim. 6 THE WITNESS: Let me clarify. 7 This morning, I believe there was some 8 confusion, and I want to make sure that -- 9 I am not going to retract but let me just 10 clarify what the policy was, what the 11 system was, and really -- 12 MR. SHEFFLER: You know, 13 really, your Honor, this is not responsive. 14 THE COURT: Right. It's not 15 responsive and he is not asking about the 16 policy. He is asking you specifically can 17 you name a document that was redacted or 18 edited or whatever words you want to use 19 by Kendrick Wells, counsel for Brown & 20 Williamson in Louisville Kentucky? 21 THE WITNESS: In specific I 22 cannot name a document. In general it was 23 relating to smoking and health issues, 24 nicotine and addiction.</p>	<p>Page 1177</p> <p>1 THE WITNESS: The specific 2 content of the document, no, sir, but what 3 I can give you is the general area today. 4 I mean, I just can't recall every specific 5 document. I can tell you that the 6 documents and the information dealt with 7 information that either I had been told 8 specifically I could not have by 9 Mr. Sandefur, or it was established by 10 policy and that I had to go to Mr. Heard 11 to get it. 12 THE COURT: I'm not talking 13 about policy. 14 Q. Now, it's Mr. Sandefur, too. 15 Look, you have made some serious 16 allegations as the judge has said. These 17 allegations, sir, are fairly specific. 18 You said in one respect, that there were 19 scientific studies that were edited. 20 A. Yes. 21 Q. And you have also said that all 22 of the scientific studies were reported in 23 summary fashion. 24 A. In a summary fashion, yes.</p>
<p>Page 1176</p> <p>1 Q. Well, sir, certainly there must 2 be a document, a study that you can recall 3 on nicotine or smoking and health that was 4 reported in the FRCs that you tried to get 5 the data on and were refused. Certainly 6 you recall one of those, can't you? 7 A. I can't recall offhand. 8 Q. Could you refresh your 9 recollection by looking at all of the 10 reports that were given to you? We have 11 them here. 12 THE COURT: Can we approach it 13 this way? Again, stop me if you don't 14 like my questions. 15 Apparently you regard this as 16 significant because you have gone public, 17 NBC, CBS, whatever. 18 THE WITNESS: Yes, sir. 19 THE COURT: So you regard it as 20 significant? 21 THE WITNESS: Yes, sir. 22 THE COURT: Would that not have 23 made an impression in your memory as to 24 the document?</p>	<p>Page 1178</p> <p>1 Q. And all we have asked you to do 2 today is point out for us what is the 3 study? 4 A. I am unable to pull out of 5 this -- out of the documents that you have 6 given me any specific study. 7 MR. ALDOCK: We don't have, your 8 Honor, all of these. They have them, they 9 have them, we haven't had them. So -- 10 for him to look at them all right now and 11 do it is a bit much. These are 40 pages 12 each whatever. We haven't had access to 13 these. 14 He hasn't been able to refresh 15 his recollection prior to this deposition. 16 He is saying he can't do it from the 17 document as he sits there. But it's not 18 like we have had these and we have had 19 access to them for the last week, and he 20 has had a chance to refresh himself. He 21 hasn't. 22 THE COURT: I can appreciate 23 that, but I also appreciate the 24 seriousness of the charge that he has</p>

<p style="text-align: right;">Page 1179</p> <p>1 leveled against B & W; that they have 2 altered scientific studies, is I guess the 3 summary of it, and he being in research 4 and development and the head of R & D and 5 dealing with this subject presumably that 6 would leave a lasting impression in his 7 mind as to what was going on. 8 And -- and I'm going to give 9 Brown & Williamson some leeway as to 10 exploring this. I have to. I mean, 11 that's a serious charge. You are talking 12 about scientists of the world, and now you 13 have included, as I understand it, Dr. 14 Baker, that Dr. Baker knew about these 15 editing and that he sent it to you after 16 it was edited, that left out things. 17 Yet on the other hand what I 18 don't understand is, if I understand the 19 testimony, you say you could -- you 20 called Dr. Baker and Dr. Baker said, I 21 can't give it to you but call Dr. Heard, 22 and Dr. Heard was giving it to you 23 surreptitiously which I guess presumably 24 means Dr. Baker knew Dr. Heard was giving</p>	<p style="text-align: right;">Page 1181</p> <p>1 in his expertise. 2 And presumably then he would be 3 able to recall specifically something 4 that, some scientific study that was 5 altered. Otherwise, he is just making a 6 general claim with -- 7 Well, I don't want to go any 8 further than that, it's not for me to draw 9 the conclusions. But I am going to give 10 Brown & Williamson great leeway in this. 11 MR. ALDOCK: But, sir -- 12 THE COURT: We will dwell with 13 it as long as we have to, Dr. Wigand, 14 until you answer it more specifically. 15 Not what you think happened. You have 16 made a claim. Not that I think it was 17 going on, you said it was going on. Now 18 factually they are asking you to support 19 it. 20 THE WITNESS: I am unable to 21 give you at this time a specific study or 22 specific document at this time. However, 23 what I can tell you is that I knew from a 24 policy and I knew --</p>
<p style="text-align: right;">Page 1180</p> <p>1 it to you surreptitiously but wouldn't 2 give it to you directly himself. 3 I mean, I don't want to be 4 drawing conclusions, that's not my role. 5 But I do think I have got to allow leeway 6 to Brown & Williamson to explore this as 7 far as they want to. 8 They have got to defend against 9 a charge like that if they are not going 10 to admit that it happened, and I don't 11 think they are ready to admit that it 12 happened. They are denying it happened so 13 they get to explore it. And a general 14 charge that things were done but I can't 15 tell you any specific document leaves 16 Brown & Williamson in a hole in effect. 17 I think the witness must get 18 more specific. 19 MR. ALDOCK: I think -- 20 THE COURT: This is not 21 something that he says was going on in 22 another department. He says this is going 23 on in his department that he is in charge 24 of. That he should -- and in his --</p>	<p style="text-align: right;">Page 1182</p> <p>1 THE COURT: No, not policy. 2 THE WITNESS: Well -- 3 THE COURT: Policies aren't 4 necessarily carried out. They are not 5 asking you about the policy. They are 6 asking you specifically. 7 THE WITNESS: I knew I couldn't 8 go to Dr. Baker and get what I needed 9 sometimes. I knew -- 10 Q. Okay, sir. How did you know 11 that? Did you ask Dr. Baker for something 12 and he refused you? 13 A. No, I knew I couldn't go there. 14 Q. How did you know without asking 15 him and having it refused? 16 A. Through Mr. Heard. 17 Q. Mr. Heard told you that 18 Dr. Baker would refuse you if you asked 19 him for a document? 20 A. Mr. Heard was clear on what 21 documents I could have and not have in the 22 United States. He was clear of the 23 policy. He was clear what B & W 24 management said.</p>

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<p>1 Q. Sir, did you ever ask Dr. Baker 2 for a document that he said, no, I cannot 3 give you? 4 A. I knew I couldn't get it from 5 him. 6 Q. Sir, you testified earlier that 7 you asked Dr. Baker for a document and he 8 said go ask Dr. Heard. Did that happen or 9 not? 10 A. A non-contentious -- 11 Q. Did that happen or not? 12 THE COURT: Yes or no. 13 THE WITNESS: On 14 non-contentious material, yes, it happened 15 routinely. 16 Q. When you asked Dr. Heard -- 17 Baker for a document, he routinely said, 18 no, go see Dr. Heard? 19 A. In the areas of non-contentious 20 science, non-smoking health -- 21 Q. Sir, my question is this: Did 22 you ever ask Dr. Baker for a document and 23 he said, go see Dr. Heard? 24 A. I didn't have to ask him for</p>	<p>1 have. 2 MR. SHEFFLER: Move to strike 3 as nonresponsive. 4 THE COURT: Sustained. 5 Q. Now, sir, if Dr. Baker never 6 refused you a document that you requested 7 of him, did Dr. Binns ever refuse you a 8 document that you requested of him? Dr. 9 Binns is over at the FRC; is he not? 10 A. Yes, Dr. Binns was in FRC. 11 Q. Did he -- did you ever make a 12 request for a document from him that he 13 refused you? 14 THE COURT: Yes or no. 15 THE WITNESS: No. 16 Q. You mentioned Dr. Thornton 17 before, Raymond Thornton? 18 A. Yes. 19 Q. Did you ever make a request for 20 a research study performed at the FRC 21 while you were there that he refused you? 22 A. Any study, yes. 23 Q. What study, sir? 24 A. I asked him for studies on</p>
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<p>1 something I knew by policy and knew by -- 2 THE COURT: Answer the 3 question, please. 4 THE WITNESS: No. 5 Q. So there never was an occasion 6 when Dr. Baker ever refused you a document 7 that you asked for? 8 A. I didn't have to ask him 9 specifically. I knew the policy. I knew 10 the situation. 11 Q. Sir, answer my question. 12 THE COURT: Your answer is he 13 never refused you a document; is that 14 correct? 15 THE WITNESS: He never refused 16 me a document in that context, yes, on 17 non-contentious science. 18 Q. On contentious or 19 non-contentious, on anything? 20 A. I never asked him for 21 contentious material. I knew the policy. 22 I knew that I could go to Alan Heard and 23 get anything. He shared with me reports 24 that he took back that he knew I couldn't</p>	<p>1 nicotine dosage, nicotine studies in man, 2 was there any studies. 3 Q. What study? 4 A. Looking at the ranges of 5 nicotine -- 6 Q. Sir, what study? What study did 7 you ask -- you told us you knew what the 8 studies were because they were in the FRC 9 semi-annual reports. What study? 10 A. Studies that were performed 11 before I got to Brown & Williamson. 12 Q. Is that the project Hippo you 13 were talking about earlier? 14 A. Project Hippo I and project 15 Hippo II. 16 Q. When was project Hippo I and 17 project Hippo II performed? 18 A. Long before 1989. 19 Q. About 1966? 20 A. Yes. Don't you think as head of 21 research I was entitled to receive those 22 reports? 23 Q. Sir, do you think that as head 24 of research you could have gone down to</p>

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<p style="text-align: right;">Page 1187</p> <p>1 the library and asked for that report?</p> <p>2 A. I knew I wouldn't find them in</p> <p>3 the library.</p> <p>4 Q. Sir, did you ask?</p> <p>5 A. I knew I wouldn't have found</p> <p>6 them in the library.</p> <p>7 THE COURT: Answer the question,</p> <p>8 Dr. Wigand. Did you ever attempt to get</p> <p>9 it out of the library? Did you ever even</p> <p>10 check to see if it was in the library?</p> <p>11 THE WITNESS: I may have, sir.</p> <p>12 THE COURT: Not may have. Did</p> <p>13 you ever check? You are narrowing it down</p> <p>14 now to that specific report, the Hippo</p> <p>15 report I think is what you said. Did you</p> <p>16 ask the librarian to give it to you or get</p> <p>17 it for you or whatever the procedure is at</p> <p>18 Brown & Williamson?</p> <p>19 Did you even ever check to see</p> <p>20 if it was in the library?</p> <p>21 THE WITNESS: I knew I wouldn't</p> <p>22 find it in the library, sir.</p> <p>23 THE COURT: Did you ever check?</p> <p>24 THE WITNESS: No, sir.</p>	<p style="text-align: right;">Page 1189</p> <p>1 sir, is that, I think, after 1990 there</p> <p>2 was a policy put in place in which</p> <p>3 documents, because of this, were not sent</p> <p>4 to you, or were withheld from you, or were</p> <p>5 edited. And I'm trying to find out</p> <p>6 whether or not that's true.</p> <p>7 THE COURT: Have we established</p> <p>8 yet? I'm sorry. Now, you are talking</p> <p>9 about 1966 study, if I hear you correctly.</p> <p>10 Can we narrow your claim down further? Is</p> <p>11 your claim that these things that were</p> <p>12 denied to you were studies made currently</p> <p>13 while you were employed at Brown &</p> <p>14 Williamson?</p> <p>15 THE WITNESS: There are some</p> <p>16 studies that were there during my tenure</p> <p>17 at Brown & Williamson, because clearly I</p> <p>18 asked on a number of occasions what was</p> <p>19 done in terms of nicotine research prior</p> <p>20 to coming to Brown & Williamson.</p> <p>21 I was very much interested in</p> <p>22 nicotine research. I had seen Ray</p> <p>23 Thornton's name in publications prior to</p> <p>24 joining Brown & Williamson. I was very</p>
<p style="text-align: right;">Page 1188</p> <p>1 BY MR. SHEFFLER:</p> <p>2 Q. Was there any report, sir, that</p> <p>3 you asked Dr. Thornton for that was</p> <p>4 authored and sent to you in summary</p> <p>5 fashion, and that's what all the reports</p> <p>6 were sent to you for, at least in the</p> <p>7 semi-annual basis in summary fashion;</p> <p>8 right?</p> <p>9 A. Um-hum.</p> <p>10 Q. Did you ask Dr. Thornton for any</p> <p>11 of those reports and were refused?</p> <p>12 A. I asked Dr. Thornton</p> <p>13 specifically for reports prior to my</p> <p>14 tenure at Brown & Williamson.</p> <p>15 Q. Sir --</p> <p>16 A. Particularly as it related to</p> <p>17 nicotine.</p> <p>18 Q. Sir --</p> <p>19 A. And I did not receive those.</p> <p>20 Q. Sir, I'm not talking about</p> <p>21 reports back in 1966.</p> <p>22 A. I'm not either.</p> <p>23 Q. I'm talking about reports that</p> <p>24 were done that -- your allegation here,</p>	<p style="text-align: right;">Page 1190</p> <p>1 much interested in what had been</p> <p>2 accomplished and what had been done prior</p> <p>3 to getting to Brown & Williamson.</p> <p>4 THE COURT: So if we understand</p> <p>5 you correctly, you are saying that after</p> <p>6 1990, things that were denied you were</p> <p>7 both current things and prior studies; is</p> <p>8 that correct?</p> <p>9 THE WITNESS: I think you could</p> <p>10 expand it to that, sir, yes.</p> <p>11 THE COURT: And are you -- in</p> <p>12 regard to the things that were edited, are</p> <p>13 you saying they were current studies or</p> <p>14 are you saying that it also affected prior</p> <p>15 studies?</p> <p>16 THE WITNESS: No, there are two</p> <p>17 situations here I would like to explain.</p> <p>18 The first situation is one after the</p> <p>19 established policy in 1990, is one</p> <p>20 situation. In terms of seeing edited</p> <p>21 reports or complete reports.</p> <p>22 There is also an issue of</p> <p>23 obtaining all the information, all the</p> <p>24 research, that had been conducted prior to</p>

<p style="text-align: right;">Page 1191</p> <p>1 my arrival at Brown & Williamson. I 2 asked, I had heard the name, I believe, at 3 the Vancouver meeting or subsequent 4 meeting relative to nicotine studies. I 5 was very much interested in nicotine 6 studies. 7 Because consistent statements 8 were that we are in the nicotine delivery 9 business, and I wanted to understand more 10 about nicotine, particularly what the 11 company did, or what the company in total 12 did. 13 After January, 1990, and because 14 there was, I was directly told not to have 15 any contentious material, there was a 16 policy or procedure set up between myself 17 and Alan Heard in which Alan Heard would 18 either send me by fax at my home, let me 19 read documents when I was in Europe or at 20 some other meeting with him, or when he 21 visited the United States that I did not 22 see come through the channels later. 23 Can I give you the specific 24 details of all those reports? No, sir,</p>	<p style="text-align: right;">Page 1193</p> <p>1 established -- the procedure that was 2 established and Alan Heard knew that I 3 couldn't have in my possession on -- 4 Q. Sir, please. What study, if 5 any, did Dr. Thornton ever say to you I 6 cannot send you? 7 A. I cannot recall at this time. 8 Q. Okay. Now, you did claim that 9 you asked Dr. Thornton for studies done in 10 a project Hippo, which was about 30 years 11 ago; do you recall that? 12 A. Yes. 13 Q. Do you recall saying that in, 14 publicly? 15 A. Publicly? 16 Q. Haven't you referred to project 17 Hippo in your, and your inability to get 18 that from U.K.? Haven't you claimed that 19 before? 20 A. I believe I have claimed that 21 before, yes. 22 Q. We have established here you 23 never even tried to get it at B & W's 24 library, did you?</p>
<p style="text-align: right;">Page 1192</p> <p>1 but I can give you the general area they 2 were. They were in areas of smoking and 3 health, and nicotine, DNA adducts, I 4 think. 5 Q. I think? 6 A. In those general areas. 7 Q. Sir, now, you have said your 8 allegations, let's see what we can do 9 individually. Let's start with after 10 1990. What report, sir, did you ask of 11 Raymond Thornton to send you after 1990 12 that he refused to send you? 13 A. I don't believe I had to ask 14 Raymond Thornton for anything, I went 15 directly to Alan Heard. 16 Q. Sir, what report, if any, did 17 Raymond Thornton ever refuse to send you? 18 A. Prior research on nicotine. 19 Q. After 1990? 20 A. Or before 1990. 21 Q. After 1990. Let's start with 22 that one. 23 A. I can't recall anything 24 specifically after 1990 because the</p>	<p style="text-align: right;">Page 1194</p> <p>1 A. But I knew it wasn't going to be 2 in B & W's library. 3 Q. Sir, isn't it correct you never 4 went to B & W's to look for it, you never 5 asked Raymond Thornton for it, and you 6 never mentioned project Hippo until after 7 you were terminated from Brown & 8 Williamson; isn't that true? 9 A. No, that's not correct. 10 Q. Isn't it true that the first 11 time you ever made a claim about project 12 Hippo was when it came to light in 13 documents that were stolen by a paralegal 14 from Brown & Williamson? 15 A. No, I think if you go back to my 16 diary -- 17 Q. Oh, the diary. The 18 contemporaneous diary, sir? 19 A. My contemporaneous diary. 20 Q. Other than that diary that you 21 claimed to have written at that time, 22 there is no evidence, is there, sir? You 23 never made a request? 24 A. There is a reference in my</p>

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<p style="text-align: right;">Page 1195</p> <p>1 diary.</p> <p>2 Q. Okay, sir.</p> <p>3 A. Contemporaneous, specifically</p> <p>4 related to project Hippo. I also asked</p> <p>5 Mr. Kohnhurst and Mr. Sandefur, I think I</p> <p>6 have also may have asked -- I think I</p> <p>7 also asked Mr. Wells.</p> <p>8 Q. Okay, sir. Let me ask you</p> <p>9 specifically -- strike that.</p> <p>10 THE COURT: While you are</p> <p>11 thinking through this, can I ask a really</p> <p>12 dumb question that I don't understand?</p> <p>13 I'm asking this of counsel. What concern</p> <p>14 is it of Brown & Williamson if he was</p> <p>15 denied documents as opposed to -- I mean I</p> <p>16 can understand the seriousness of the</p> <p>17 charge that he is saying these scientific</p> <p>18 studies were edited by somebody because I</p> <p>19 presume there is some procedure whereby</p> <p>20 these documents are either exchanged or</p> <p>21 filed or sent to the government or</p> <p>22 whatever.</p> <p>23 And I can understand the</p> <p>24 seriousness of saying that something was</p>	<p style="text-align: right;">Page 1197</p> <p>1 1966 on nicotine? You had access, did you</p> <p>2 not, to the Surgeon General's report on</p> <p>3 nicotine, to huge amounts of data on</p> <p>4 nicotine, to huge amounts of data that was</p> <p>5 being generated on nicotine every day in</p> <p>6 your own department as well as overseas;</p> <p>7 you had all of this, didn't you?</p> <p>8 A. I don't think we were generating</p> <p>9 any pharmacology data in Brown &</p> <p>10 Williamson.</p> <p>11 Q. Sir, were you --</p> <p>12 A. The Surgeon General's -- excuse</p> <p>13 me. The Surgeon General's report on</p> <p>14 smokeless tobacco and the subsequent</p> <p>15 Surgeon General's report in 1988 was the</p> <p>16 first Surgeon General's report I knew that</p> <p>17 clearly linked tobacco and nicotine as a</p> <p>18 pharmacologically active drug and that it</p> <p>19 was addictive. That's what the 1988</p> <p>20 report said.</p> <p>21 The smokeless tobacco report</p> <p>22 said that nicotine is the active</p> <p>23 ingredient in smokeless tobacco. Don't</p> <p>24 you think I would be interested in what</p>
<p style="text-align: right;">Page 1196</p> <p>1 edited. But I don't understand, if he was</p> <p>2 denied something --</p> <p>3 MR. SHEFFLER: From 1966?</p> <p>4 THE COURT: -- what in the</p> <p>5 world? It seems to me it's rather</p> <p>6 irrelevant to both sides. If they put him</p> <p>7 in a position and then they denied him</p> <p>8 some literature, if they did, what does it</p> <p>9 matter to anybody? Is it even a charge</p> <p>10 that he can go public with that, in</p> <p>11 effect, he is saying his company didn't</p> <p>12 tell him something that he wanted to know</p> <p>13 and so what?</p> <p>14 Is that not irrelevant? The</p> <p>15 charge about the redacting or the editing</p> <p>16 is a different matter because I assume</p> <p>17 that's part of what the government is</p> <p>18 interested in.</p> <p>19 MR. SHEFFLER: I don't know</p> <p>20 what the government is interested in, your</p> <p>21 Honor, but you are absolutely correct.</p> <p>22 Maybe I should start off with a question.</p> <p>23 Q. So what if Brown & Williamson</p> <p>24 kept from you a project that was done in</p>	<p style="text-align: right;">Page 1198</p> <p>1 the company has done to assess that?</p> <p>2 Q. Sir, the question is, you were</p> <p>3 given access to a great deal of</p> <p>4 information about nicotine while you were</p> <p>5 at Brown & Williamson. You were given</p> <p>6 access to a great deal of information</p> <p>7 about nicotine while it was being,</p> <p>8 research was being performed at the U.K.</p> <p>9 That information was communicated to you.</p> <p>10 You had full access to all that</p> <p>11 information. You never even went down to</p> <p>12 see if this project Hippo, this 1966</p> <p>13 project Hippo, was even in the library.</p> <p>14 Did you?</p> <p>15 THE COURT: Have you not already</p> <p>16 answered that, Dr. Wigand?</p> <p>17 THE WITNESS: I think I have,</p> <p>18 sir.</p> <p>19 THE COURT: You say you never</p> <p>20 attempted to get it; you don't even know</p> <p>21 if it was in the library.</p> <p>22 Q. Sir, isn't it true that you had</p> <p>23 access to the nicotine research that was</p> <p>24 going on at the time you were at Brown &</p>

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<p>1 Williamson?</p> <p>2 A. All nicotine research? I don't</p> <p>3 believe I was.</p> <p>4 Q. You don't believe so. What</p> <p>5 study then was denied you?</p> <p>6 A. I cannot recall a specific</p> <p>7 study.</p> <p>8 Q. Who denied you the study? Let's</p> <p>9 start with Southampton. Most of the</p> <p>10 fundamental research that was performed in</p> <p>11 BATCO - performed about the B.A.T.</p> <p>12 companies, took place in Southampton; is</p> <p>13 that correct?</p> <p>14 A. Took place in Southampton, took</p> <p>15 place in other places in Europe.</p> <p>16 Q. Okay. Sir, who were the people</p> <p>17 at Southampton who were in the Fundamental</p> <p>18 Research Center and who you would call for</p> <p>19 documents when you wanted to see the full</p> <p>20 report of the research documents that were</p> <p>21 sent to you?</p> <p>22 A. When I --</p> <p>23 Q. Who were the people first?</p> <p>24 A. Who were the people I could call</p>	<p>1 report?</p> <p>2 A. On non --</p> <p>3 THE COURT: Any report.</p> <p>4 Q. No, sir, Did he ever deny you</p> <p>5 access to a report?</p> <p>6 A. No.</p> <p>7 Q. Graham Smith, did he ever deny</p> <p>8 you access to a report?</p> <p>9 A. I think he may have referred me</p> <p>10 to Alan Heard.</p> <p>11 Q. Did he ever deny you access to a</p> <p>12 report?</p> <p>13 A. He referred me to Alan Heard.</p> <p>14 Is that access? Did he give me the</p> <p>15 report?</p> <p>16 THE COURT: Did he deny you?</p> <p>17 Did he say I'm not going to give it to</p> <p>18 you?</p> <p>19 THE WITNESS: I could say in a</p> <p>20 way be, yes. He said go see Alan Heard.</p> <p>21 Q. In a way?</p> <p>22 A. Go see Alan about that. Alan is</p> <p>23 in charge.</p> <p>24 Q. Sir, did Graham Smith -- did</p>
Page 1200	Page 1202
<p>1 for routine non-contentious subjects --</p> <p>2 Q. No, sir, no, sir. Who were the</p> <p>3 people who had access to the research</p> <p>4 reports and could send them to you?</p> <p>5 A. Alan Heard.</p> <p>6 Q. Anyone else?</p> <p>7 A. I would imagine Ray Thornton had</p> <p>8 access to them.</p> <p>9 Q. Anyone else?</p> <p>10 A. Mr. Wells.</p> <p>11 Q. Mr. Wells is over in America.</p> <p>12 Is there a Mr. Wells in the U.K.?</p> <p>13 THE COURT: Are we speaking of</p> <p>14 Kendrick Wells?</p> <p>15 THE WITNESS: Yes, I am, sir.</p> <p>16 THE COURT: He is asking you</p> <p>17 about Southampton, I believe.</p> <p>18 THE WITNESS: Okay. Terry</p> <p>19 Mitchell I could ask.</p> <p>20 Q. Terry Mitchell.</p> <p>21 A. Graham Smith. Richard Binns. I</p> <p>22 mean, these are just names of people.</p> <p>23 Q. Okay. All right. Richard</p> <p>24 Binns, did he ever deny you access to a</p>	<p>1 Graham Smith ever say, no, I cannot give</p> <p>2 you that report?</p> <p>3 A. After 1990 or before 1990?</p> <p>4 Ever?</p> <p>5 Q. While you were at B & W. Let's</p> <p>6 do that.</p> <p>7 A. I can say after 1990 clearly I</p> <p>8 knew that there was an established policy.</p> <p>9 I clearly --</p> <p>10 THE COURT: That's not the</p> <p>11 question. Answer his question, please.</p> <p>12 THE WITNESS: Then I would have</p> <p>13 to say no.</p> <p>14 Q. Raymond Thornton, besides his</p> <p>15 1966 project that you purportedly asked</p> <p>16 him for, did he ever deny you access to</p> <p>17 any of the fundamental research being</p> <p>18 conducted at the FRC while you were at</p> <p>19 B & W?</p> <p>20 A. No.</p> <p>21 Q. Alan Heard, did he ever deny you</p> <p>22 access to any of the fundamental research</p> <p>23 that was being conducted at B & W?</p> <p>24 A. At B & W?</p>

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<p style="text-align: right;">Page 1203</p> <p>1 Q. Excuse me, fundamental research 2 that was being conducted at Southampton? 3 A. No, Alan gave me more than I was 4 entitled to have at times. 5 Q. Sir -- 6 A. Yes, Alan Heard cooperated and 7 provided -- 8 Q. The question is, did anybody -- 9 excuse me, the question is, did Alan Heard 10 ever deny you any research that was being 11 conducted at the Southampton? 12 A. No, Alan Heard gave me ample 13 amount of information and research and 14 data. 15 Q. Okay. Sir, we have named Alan 16 Heard, Raymond Thornton, Terry Mitchell, 17 Graham Smith and Richard Binns. Is there 18 anyone else who you ever asked for 19 research at Southampton and were denied? 20 A. At this time I can't recall 21 anybody. 22 Q. So you can't recall a single 23 person who you asked for research at 24 Southampton and were denied, can you?</p>	<p style="text-align: right;">Page 1205</p> <p>1 THE WITNESS: I didn't have to, 2 sir. I knew I had a mechanism by which I 3 could get it from Alan Heard. 4 Q. Let's be clear here. Put your 5 claims and your beliefs aside. The fact 6 is, you were never denied a research study 7 from the U.K. Fundamental Research Center 8 during the time you were there, at B & W. 9 That is correct, is it not? 10 A. If that includes Alan Heard, 11 yes. If that includes Alan Heard, yes. 12 Q. Okay, sir. So it would be false 13 to say that you were denied research when 14 you requested research of the U.K. FRC's 15 program. That would be wrong, wouldn't 16 it? 17 A. I definitely got research that 18 I, that I couldn't keep. I got from Alan 19 Heard documents and I was read documents 20 that I had returned to him. 21 THE COURT: Answer his question, 22 please. 23 THE WITNESS: Was I denied the 24 research? No.</p>
<p style="text-align: right;">Page 1204</p> <p>1 A. On non-contentious matters -- 2 Q. Sir, no, that is not the 3 question. 4 A. I have to qualify it. 5 Q. No. 6 A. The answer would be no -- 7 THE COURT: Answer the question. 8 THE WITNESS: I was never 9 denied non-contentious research from these 10 people. 11 THE COURT: Answer the question. 12 THE WITNESS: No. I mean -- 13 Q. No, you never denied research. 14 A. No. However, I would like to 15 explain that. May I explain? 16 THE COURT: Okay. Go ahead. 17 You were never denied any documents? Any 18 document dealing with basic research? Is 19 that it; is that correct? 20 THE WITNESS: I knew -- no. 21 No. However, I knew that I wouldn't have 22 gotten it anyway and I asked Alan Heard. 23 THE COURT: So you never tested 24 this contended policy?</p>	<p style="text-align: right;">Page 1206</p> <p>1 Q. Okay, sir. Now, you have also 2 claimed that there were edited reports, 3 coming from Southampton. You have made 4 that claim, too. Have you not? 5 A. Yes. 6 Q. And you have claimed that this 7 started happening in 1990; is that 8 correct? 9 A. After January 17th, 1990. 10 Q. Sir, can you name for us today, 11 identify for us today the research report 12 that you claim was edited? 13 A. No, I cannot and I believe I 14 have stated that already. I cannot 15 compare what I have here to what was 16 before. I just can't do it. 17 Q. Okay, sir. You told us that you 18 got the abstracts of all the research 19 reports. And you have also told us that 20 when you called up, you could get the 21 reports sent to you. And you have told us 22 that no one ever at U.K. denied your 23 request to send you a report. 24 My question is this: Who did</p>

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<p>1 you call up and get an incomplete or 2 edited scientific report from at the U.K.? 3 A. No one because I never asked 4 specifically because I knew I could get it 5 from Alan Heard. I knew -- 6 Q. Sir, did Alan Heard give you an 7 edited scientific report? 8 A. Alan Heard gave me reports and 9 data that never made it here to the United 10 States. 11 Q. Sir -- 12 A. That I had to return -- 13 Q. He gave it to you there or gave 14 it to you here or he sent it to you or 15 what? 16 A. I will explain how I got it. 17 Can I do that? 18 THE COURT: You said an edited, 19 did you mean an unedited? 20 Q. No. Here is what I -- no. My 21 question is, he claims he got reports that 22 were edited. We have already talked about 23 the fact he has got all these unedited 24 reports. But he also claims he has had</p>	<p>1 A. That I never got; that is 2 correct. 3 Q. Why would Alan -- did Alan Heard 4 make these edits? 5 A. I don't know who made the edits 6 specifically. 7 Q. But it came from Alan Heard and 8 it came from the U.K. 9 A. I got it from Alan Heard a 10 number of different ways. 11 Q. Wait a minute, sir. I'm not 12 talking about ways now. I'm talking about 13 what you got. You said that the only 14 person you could identify who sent you an 15 edited report was Alan Heard. And you 16 said that Alan Heard sent you these edited 17 reports from the U.K. to you in the U.S. 18 And you said that you cannot tell who did 19 the edits. How do you know Alan Heard 20 didn't do the edits? 21 A. I don't know that. He may have 22 but there was an existing policy -- 23 Q. Sir, I don't want to know about 24 policy. I'm asking you specific questions</p>
Page 1208	Page 1210
<p>1 reports that were edited. And I simply 2 want to know the title of the report that 3 was edited. 4 A. And I think I have told you 5 repeatedly I cannot recall a specific 6 report. 7 Q. All right, sir. Can you recall 8 the person who sent you the report? 9 A. Sent me? 10 Q. Sent you a report that was 11 changed, that was edited? 12 A. Alan Heard. 13 Q. Okay. What was the report that 14 Alan Heard sent you that was edited? 15 A. I cannot recall. But it was 16 edited. 17 Q. In what way was it edited? 18 A. References to less hazardous, 19 references to contentious, anything that 20 was in relation to discoverable stuff that 21 would be in U.S. litigation. 22 Q. This is a report that Alan Heard 23 sent you that you claim you didn't get in 24 B & W?</p>	<p>1 about this so-called document. Or was 2 there more than one document; do you know? 3 A. I think there was more than one 4 document. 5 Q. Now, sir, why would Alan Heard 6 edit a document in the U.K. and send it to 7 you if he wasn't sending it to Brown & 8 Williamson? 9 A. Why? Because he knew the policy 10 that was established in B & W's management 11 position in terms of having contentious 12 data research on U.S. soil. 13 Q. Well, sir, you have to help me 14 out here. As I understand your claim now, 15 Alan Heard edited out of documents 16 contentious language, and then sent them 17 to you surreptitiously so it didn't get to 18 B & W. What's -- it seems to me, sir, 19 that if he is sending them to you, 20 surreptitiously, if that's your claim, 21 what's the purpose of the edits? 22 A. To see if I concurred with them. 23 Q. All right. So Alan Heard sent 24 you drafts of documents that he edited to</p>

<p style="text-align: right;">Page 1211</p> <p>1 see if you would concur?</p> <p>2 A. I'm not so sure. He may or may</p> <p>3 not have edited.</p> <p>4 Q. You don't know, sir, who edited</p> <p>5 them, right?</p> <p>6 A. All I know is what was, that was</p> <p>7 contained in the reports, was reports that</p> <p>8 I did not receive, Alan Heard was clear on</p> <p>9 the policy, after 1990, Alan Heard was</p> <p>10 clear on B & W's management position on</p> <p>11 documents that were contentious, and Alan</p> <p>12 Heard let me read and I had to return to</p> <p>13 him documents. Alan Heard sent to me by</p> <p>14 fax documents, that I destroyed or sent</p> <p>15 back, with some comments on it.</p> <p>16 Q. Mr. Wigand, when you say that</p> <p>17 documents were edited by the Legal</p> <p>18 Department and you made that claim, were</p> <p>19 you referring to these documents that Alan</p> <p>20 Heard sent you that were edited for your</p> <p>21 approval; is that what you were claiming?</p> <p>22 A. No, I'm claiming above and</p> <p>23 beyond that.</p> <p>24 Q. All right, sir. Is it your</p>	<p style="text-align: right;">Page 1213</p> <p>1 the policy?</p> <p>2 Q. Because, sir, we are asking you</p> <p>3 about facts, F-A-C-T-S, facts. What is it</p> <p>4 that you got or what is it you claim to</p> <p>5 have got, can you identify? You told us</p> <p>6 you can't name a document. You told us</p> <p>7 that only one person knows anything about</p> <p>8 this besides purportedly you, is Alan</p> <p>9 Heard.</p> <p>10 Now, I'm trying to figure out</p> <p>11 how this is all working. Are you claiming</p> <p>12 that Alan Heard edited documents without</p> <p>13 the knowledge of the, Richard Binns and</p> <p>14 Richard Baker and Ray Thornton and all</p> <p>15 these people? This was something Alan</p> <p>16 Heard did on his own? Are you accusing</p> <p>17 him of editing scientific research for</p> <p>18 reasons that were not simple science? Is</p> <p>19 that what you are saying?</p> <p>20 A. There is some degree of that</p> <p>21 there, yes.</p> <p>22 Q. You are claiming now that Alan</p> <p>23 Heard --</p> <p>24 A. Alan Heard --</p>
<p style="text-align: right;">Page 1212</p> <p>1 contention that Alan Heard edited</p> <p>2 documents that he sent, and subsequently</p> <p>3 sent to you, or was someone else editing</p> <p>4 these documents? Were these scientific</p> <p>5 edits, sir?</p> <p>6 A. No, I don't think they were all</p> <p>7 scientific edits.</p> <p>8 Q. Okay, sir. If Dr. Heard was</p> <p>9 sending you documents that were edited for</p> <p>10 your comment and to send them back to him,</p> <p>11 was it for scientific reasons?</p> <p>12 A. No, I believe for legal reasons.</p> <p>13 Q. So Dr. Heard was editing these</p> <p>14 and asking you to make edits on these for</p> <p>15 legal reasons?</p> <p>16 A. I'm not sure of that.</p> <p>17 Q. Well, that's what you just</p> <p>18 testified to. Was it for legal reasons or</p> <p>19 scientific reasons or some other reason?</p> <p>20 A. Alan Heard clearly knew the</p> <p>21 policy --</p> <p>22 Q. I don't want to know about the</p> <p>23 policy.</p> <p>24 A. Why don't you want to know about</p>	<p style="text-align: right;">Page 1214</p> <p>1 Q. -- is misrepresenting what is in</p> <p>2 a scientific report?</p> <p>3 A. I'm not sure of how the edits</p> <p>4 got in there. They may or may not have</p> <p>5 been Alan Heard.</p> <p>6 Q. Okay. Are you accusing anyone</p> <p>7 else, sir, of editing these scientific</p> <p>8 reports that Dr. Heard sent you from the</p> <p>9 U.K.?</p> <p>10 A. No.</p> <p>11 Q. So, other than Alan Heard, there</p> <p>12 was no one that you are accusing today of</p> <p>13 editing scientific reports from the U.K.?</p> <p>14 A. I think Ray Thornton may have</p> <p>15 been directly involved with discussions</p> <p>16 with Mr. Kendrick Wells at times he</p> <p>17 visited the United States on documents</p> <p>18 that he believed needed to be reviewed,</p> <p>19 vetted by the Legal Department before they</p> <p>20 were sent or should they be sent.</p> <p>21 Q. Sir, we are talking very</p> <p>22 specifically about these documents you</p> <p>23 claim to have seen that were edited.</p> <p>24 Other than Alan Heard, can you tell me who</p>

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<p style="text-align: right;">Page 1215</p> <p>1 edited those documents? You have 2 identified Alan Heard. You have claimed 3 that he has done it. Anybody else done 4 it? 5 A. I believe Kendrick Wells was 6 directly involved. 7 Q. Kendrick Wells is over in 8 Louisville. We are talking about 9 documents -- you claim that these 10 documents were edited in the U.K. and sent 11 to you, didn't you? 12 A. Ray Thornton could have brought 13 them as he did and reviewed it with 14 Kendrick Wells -- 15 Q. Did you see that, sir? 16 A. I talked -- 17 Q. Did you see that happen? 18 A. No, I did not see that happen 19 personally. 20 Q. Then how do you know it 21 happened, sir? 22 A. Because Ray Thornton explained 23 it to me, it was happening, he was unhappy 24 with it, and so was Alan Heard unhappy</p>	<p style="text-align: right;">Page 1217</p> <p>1 your claim now, isn't it? 2 A. In conjunction with Kendrick -- 3 Q. And not editing for scientific 4 reasons. That's your claim? 5 A. That is correct. That is my 6 claim. Very specifically. 7 Q. And you can't even cite a single 8 document to substantiate this serious 9 claim? 10 A. At this time I cannot cite a 11 single document, no, I cannot. But I can 12 tell -- 13 Q. And you destroyed them all so 14 there is no evidence of it; is that right? 15 A. That was my agreement with Mr. 16 Heard that he would let me read it and he 17 would take it back, or he would fax it to 18 me and I would destroy it. That is very 19 clear. 20 Q. So who else was on this, sir? 21 Was Richard Binns in on it? 22 A. I don't know if Richard Binns 23 was in on it. 24 Q. Richard Baker?</p>
<p style="text-align: right;">Page 1216</p> <p>1 with it. That there was this policy by 2 which documents were vetted. 3 Q. Sir, we are talking 4 specifically. Do you have a specific 5 document that Raymond Thornton brought 6 over here and took back to him and gave to 7 Alan Heard to send to you. Is there such 8 a thing? 9 A. I'm sure in discovery we will 10 find such a thing. 11 Q. Is there such a thing, sir? 12 A. I believe there is such a thing, 13 yes. 14 Q. Well, that would be something 15 you surely would remember, wouldn't you? 16 A. I cannot remember the specifics. 17 I can remember the general area. 18 Q. General areas, sir, are easy to 19 make claims about, but difficult to prove. 20 What I am asking you to do, sir, is prove 21 for me the instance in which this claim of 22 yours, it's a serious claim. You are not 23 only claiming now that Dr. Thornton, Dr. 24 Heard, are editing documents -- that's</p>	<p style="text-align: right;">Page 1218</p> <p>1 A. I don't know if Richard Baker 2 was in on it. 3 Q. Smith, Mitchell? 4 A. I don't know if they were in on 5 it. 6 Q. Okay, sir. 7 A. What is clear -- 8 Q. Sir, you have testified that the 9 FRC has published semi-annually reports? 10 A. That's correct. 11 Q. I want you to go through those 12 and I don't care how long it takes, and we 13 are going to sit here until you do. And I 14 want to find the title of the report that 15 you claim Alan Heard edited. 16 A. I can't do that. 17 Q. You will do it, sir. If it 18 takes us all today, you will do it. You 19 have all the reports, sir. You want to 20 refresh your recollection, you can. 21 MR. SHEFFLER: Judge, am I 22 entitled to have him do that? 23 THE COURT: I think so. 24 MR. ALDOCK: Are you going to</p>

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<p style="text-align: right;">Page 1219</p> <p>1 give us all of them?</p> <p>2 MR. WALLACE: They are right</p> <p>3 here.</p> <p>4 A. Can I have the pre - drafts of</p> <p>5 them.</p> <p>6 Q. No, that's all we have got.</p> <p>7 A. How can I tell if they are</p> <p>8 edited? These don't have no editing marks</p> <p>9 on them.</p> <p>10 Q. Sir, certainly if you saw the</p> <p>11 title, and the abstract and the subject of</p> <p>12 the report, you would be able to tell if</p> <p>13 it was the report that was -- wait. Are</p> <p>14 you telling me, sir, that somebody edited</p> <p>15 scientific research and sent it to you and</p> <p>16 you supposedly are outraged by this, that</p> <p>17 you cannot recall what it is now? You</p> <p>18 can't recall the document.</p> <p>19 You were able to get on 60</p> <p>20 Minutes and make these claims. You were</p> <p>21 able to get out there in front of the</p> <p>22 press and make these claims. Now when it</p> <p>23 comes down to the time to prove the claims</p> <p>24 you suddenly have amnesia.</p>	<p style="text-align: right;">Page 1221</p> <p>1 A. How would you like me to do that?</p> <p>2 MR. SHEFFLER: Well, can we go</p> <p>3 off the record?</p> <p>4 THE COURT: Let's stay on a</p> <p>5 minute until we decide how we are going to</p> <p>6 do it, though. It may take some time to</p> <p>7 go through there.</p> <p>8 THE WITNESS: You are talking</p> <p>9 about hours and days.</p> <p>10 THE COURT: Well, they are</p> <p>11 entitled to it.</p> <p>12 THE WITNESS: Well, this is the</p> <p>13 first time I have seen the document, your</p> <p>14 Honor, and it's hard for me sitting here,</p> <p>15 okay, at this moment --</p> <p>16 THE COURT: Wait a minute. You</p> <p>17 say the first time you have seen the</p> <p>18 document. I thought you testified earlier</p> <p>19 that you have seen these.</p> <p>20 THE WITNESS: Oh, yeah, I have</p> <p>21 seen these documents years ago. I mean,</p> <p>22 you are talking about years' ago</p> <p>23 information. And I will be willing to sit</p> <p>24 down and go through it.</p>
<p style="text-align: right;">Page 1220</p> <p>1 What I am asking you, sir, is,</p> <p>2 isn't this something that was of such</p> <p>3 moment and consequence that you would</p> <p>4 normally have remembered it?</p> <p>5 A. And I'm sorry I didn't save the</p> <p>6 documents.</p> <p>7 Q. I'm sorry, too.</p> <p>8 A. And I'm sorry when I was at</p> <p>9 Brown & Williamson I didn't save those</p> <p>10 documents.</p> <p>11 Q. And I'm sorry you've made these</p> <p>12 claims, sir.</p> <p>13 A. No, I'm not sorry.</p> <p>14 Q. I am -- I am sorry you can't --</p> <p>15 Okay. Strike that. Sir, you must go</p> <p>16 through these documents and be able to</p> <p>17 pick out one that you claim was kept from</p> <p>18 you or -- strike that. Was edited.</p> <p>19 I am simply asking you to look</p> <p>20 at the FRC semi-annual reports and work</p> <p>21 program and identify that document that</p> <p>22 was edited.</p> <p>23 A. I will try to do that.</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">Page 1222</p> <p>1 MR. ALDOCK: The problem we are</p> <p>2 having, your Honor, is that he says that</p> <p>3 reports were edited. He knows about it.</p> <p>4 He knows about it from conversations. He</p> <p>5 knows about it from the policy. And he</p> <p>6 knows people who told him that was</p> <p>7 happening and he saw things he was told he</p> <p>8 couldn't have.</p> <p>9 Now, whether he can find in any</p> <p>10 of these documents what those things are</p> <p>11 that were referred to, he admits he has no</p> <p>12 specific recollection of a specific</p> <p>13 report. He has had conversations with</p> <p>14 people that the policy was implemented.</p> <p>15 And he saw stuff that he never saw the</p> <p>16 other way and he can't say which of these</p> <p>17 reports that are summary, those matters</p> <p>18 refer to.</p> <p>19 He could look at all these</p> <p>20 documents but I don't see what that does.</p> <p>21 MR. SHEFFLER: Your Honor -- I</p> <p>22 have a suggestion, your Honor. I have a</p> <p>23 suggestion, your Honor.</p> <p>24 MR. ALDOCK: Okay.</p>

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<p style="text-align: right;">Page 1223</p> <p>1 MR. SHEFFLER: Certainly, your 2 Honor, if this was such a momentous event 3 as we all must agree it was, that he 4 received a report that a scientist edited 5 from England, he certainly would have 6 written in his diary the name of the 7 report. 8 So I ask him to look at his 9 diary -- 10 THE COURT: To see if that will 11 refresh his memory? 12 MR. SHEFFLER: -- and refresh 13 his recollection that way. 14 THE WITNESS: I think if you 15 gave me back the diary that Brown & 16 Williamson confiscated when I left -- 17 Q. No, sir, the diary you 18 supposedly did contemporaneously. 19 A. That is a contemporaneous diary 20 that looks at conclusions and reflections. 21 It's not a day-by-day. 22 Q. Sir, you produced this and 23 represented it was your diary. You 24 claimed that you are relying upon this</p>	<p style="text-align: right;">Page 1225</p> <p>1 Heard, did you regard that as rather 2 significant? 3 THE WITNESS: Yes, and I think 4 those conclusions are reflected in my 5 diary, sir. 6 Q. Well, then look at your diary 7 and get the name of the report for us. 8 A. I don't have the name of the 9 report in the diary. 10 Q. How do you know? 11 A. Because I have read my diary. 12 Q. Okay. Why didn't you write it 13 down? Why didn't you write down what it 14 was? 15 A. I wrote it in another diary. 16 Q. Sir, another diary. Mr. Wigand, 17 you cannot refresh your recollection from 18 the diary that you claim you wrote 19 contemporaneously with the events of 20 something that was one of the most, had to 21 be one of the most momentous events at 22 your time at B & W? 23 A. That's one of many events that 24 happened there at B & W. One of events.</p>
<p style="text-align: right;">Page 1224</p> <p>1 diary that you claim you wrote at the time 2 you were at Brown & Williamson in the 3 four-year period you were there. 4 If you did, sir, would you not 5 put in your diary, Alan Heard, redacted 6 documents sent to me, or something upon 7 even a reflection that Alan Heard sent to 8 you redacted documents, edited documents? 9 Wouldn't that be something of a momentous 10 event that you would put in your diary? 11 A. I put the conclusions in the 12 diary. 13 Q. You put in your diary you went 14 golfing, you went to see the golf 15 tournament at the Masters. Wouldn't you 16 put in something as momentous as this? 17 THE COURT: Did you regard it as 18 a significant event at the time it 19 occurred? 20 THE WITNESS: It was something 21 that was told to me to do. It was 22 something -- 23 THE COURT: I'm talking about 24 when you saw this edited report from Dr.</p>	<p style="text-align: right;">Page 1226</p> <p>1 Q. Okay, sir. 2 A. There was a policy 3 established -- 4 Q. I don't want to hear about 5 policies -- 6 A. -- and I was told by my 7 management -- 8 Q. -- and I move to strike that. 9 THE COURT: Sustained. 10 Q. So no not even in this so-called 11 diary do you have written down that Alan 12 Heard redacted or edited a document and 13 sent it to you? 14 Did you write down that Alan 15 Heard redacted the document and sent it to 16 you, sir? 17 A. No, I think I wrote in the diary 18 that Ray Thornton and Kendrick Wells -- 19 Q. Sir, did you write down in the 20 diary that Alan Heard redacted and edited 21 a document and sent it to you? Did you 22 write it down in your diary? 23 A. Not my reflections diary, no, I 24 didn't.</p>

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<p style="text-align: right;">Page 1227</p> <p>1 Q. Was this diary your reflections 2 of your time at B & W and the things that 3 occurred at B & W? 4 A. And it was done monthly, it was 5 done sometimes every quarter or every two 6 months. 7 Q. So you forgot after a couple 8 weeks that something as significant as 9 this happened and just didn't write it 10 down? Is that what you want us to 11 believe? 12 Alan Heard never sent you an 13 edited document, did he? 14 A. Yes, he did. 15 Q. Sir, you can't identify a single 16 shred of evidence as to what that 17 document, supposed document is. You can't 18 name it. You can't tell us when it was 19 done. You can't even show us in your 20 diary where you made any entry about it. 21 It never happened. 22 A. Yes, it did. 23 Q. Did it happen last year? 24 A. What happened last year?</p>	<p style="text-align: right;">Page 1229</p> <p>1 conclusion is in the diary. The specific 2 document is not in the diary. 3 THE COURT: They want the 4 specific document. 5 MR. ALDOCK: But he says it's 6 not there, he doesn't have it. 7 THE COURT: I know. I assume 8 that Brown & Williamson has some way to go 9 to be back on the paper trail and if he 10 says it's been changed they want to check 11 the original docket and try to see -- I 12 mean, I guess -- 13 MR. ALDOCK: They have what -- 14 look, they have -- they asked for his 15 recollection. He says he doesn't have it. 16 They have that conclusion. That's what 17 they have. 18 THE COURT: That's the 19 conclusion, they want the facts. 20 MR. ALDOCK: But he can't give 21 him what he can't remember. 22 MR. SHEFFLER: Your Honor, this 23 man can't just get out there and make 24 these wild claims and then say I don't</p>
<p style="text-align: right;">Page 1228</p> <p>1 Q. Is this when you came to the 2 conclusion it happened? Did you come to 3 the conclusion it happened last year? 4 A. No, that conclusion happened in 5 1990 and I think my diary clearly 6 reflected -- 7 Q. It happened in 1990, sir? 8 A. I think my diary clearly 9 reflects -- 10 Q. In 1991? 11 A. Are you going to let me finish 12 or do you want me not to continue? I 13 think my diary clearly reflects -- 14 Q. All right, sir. Get your diary 15 and show us where -- 16 MR. ALDOCK: Can he finish the 17 sentence? 18 THE WITNESS: My diary clearly 19 reflects the conclusions of what happened. 20 Q. What we want, sir, is the edited 21 document or reference to it. 22 MR. ALDOCK: He said it's not in 23 the diary. So I'm not sure -- we could 24 beat the dead horse. He said the</p>	<p style="text-align: right;">Page 1230</p> <p>1 have any proof but it happened. And then 2 when we try to ask him for the proof he 3 says, I forget. 4 MR. ALDOCK: They got the 5 conclusion. 6 THE WITNESS: I can give you 7 proof of one specific incident. 8 THE COURT: I have already said 9 that I'm going to give Brown & Williamson 10 whatever time they need to go into this 11 with specificity. You have made a charge 12 and they are permitted to ask you to name 13 the document. 14 And if it was such a significant 15 event that you go public on 60 Minutes, 16 but you can't remember the document, 17 somebody, a judge or a jury, is going to 18 be permitted to draw a conclusion from 19 that. 20 THE WITNESS: I don't think 21 that's going to be -- that's not going 22 to be arrived at today, is it, sir? 23 THE COURT: I'm not going to 24 draw a conclusion but I'm going to give</p>

<p>Page 1231</p> <p>1 Brown & Williamson every possibility to 2 defend the charge that you say you can't 3 come up with one document to support it. 4 They have to be permitted to go into this 5 at great length. 6 And if it's so significant they 7 are asking you to go through these 8 documents, surely to goodness, if it's a 9 significant event in your life -- 10 THE WITNESS: I did chronicle 11 in my diary two significant events that 12 occurred in terms of document changes. I 13 did. 14 THE COURT: If it's in there, 15 it's in there. 16 Q. Okay, then. Can you point out 17 those two changes that Alan Heard -- 18 A. Wait a minute. You asked me if 19 I could prove or to establish a practice 20 or an event in my life during Brown & 21 Williamson that was related to document 22 change. And I can. 23 Q. No, sir, no, sir. You have 24 claimed that Alan Heard edited a</p>	<p>Page 1233</p> <p>1 it turned out to be Dr. Baker. And now 2 you say it's not Dr. Baker, it's now Alan 3 Heard. 4 THE WITNESS: I tried to 5 clarify that during that confusion. I 6 knew I couldn't go to Richard Baker to get 7 a report after 1990 or details of a 8 report. I knew I could -- 9 THE COURT: You have testified 10 you have never been denied a document from 11 Dr. Baker. We have been through all that. 12 THE WITNESS: But I already 13 knew -- 14 THE COURT: And you are saying 15 now that Dr. Baker never changed a 16 document. 17 THE WITNESS: I didn't say Dr. 18 Baker changed a document this morning, did 19 I? I don't think I did. 20 THE COURT: I don't know, I'm 21 asking you. 22 THE WITNESS: No, I don't think 23 I ever said that, sir. 24 THE COURT: You did say Kendrick</p>
<p>Page 1232</p> <p>1 scientific report. That's what we are 2 addressing. Alan Heard, you claim, edited 3 a scientific report and sent it to you 4 from the U.K. That is a serious charge. 5 A. It's also a serious charge that 6 minutes of a scientific meeting are 7 changed by an attorney. That is also a 8 serious charge. 9 MR. SHEFFLER: Your Honor, this 10 is -- 11 A. That's what I chronicled. 12 THE COURT: I'm not sure. 13 MR. ALDOCK: That Alan Heard 14 changed a document, your Honor, was never 15 said on TV. What he says is that there is 16 a practice and a policy. Now, with regard 17 to the practice they -- with regard to the 18 policy we got that. With regard to the 19 practice they are cross-examining. And on 20 the practice he can't cite the incident. 21 Fair enough, they got that. 22 THE COURT: We have to go first 23 to the charge. I thought this morning it 24 was Kendrick Wells that did it. And then</p>	<p>Page 1234</p> <p>1 Wells changed them. 2 THE WITNESS: I said Kendrick 3 Wells changed documents and I will stay by 4 that for a long time. 5 Q. Are you going to stay by the 6 fact that Alan Heard changed the 7 scientific studies for a long time? 8 A. I'm going to say -- 9 Q. Because we are going to pursue 10 it until we have to. 11 A. Well, Alan Heard made editing 12 marks on a document. 13 THE COURT: But you have not 14 been able -- you say you cannot identify 15 any single document that either Kendrick 16 Wells or Alan Heard, Dr. Alan Heard, 17 changed; is that correct? 18 THE WITNESS: I at this time 19 cannot do that. What I can clearly say, 20 that the practice was not to put into 21 documents contentious information, 22 contentious subject matter. 23 THE COURT: That's too general. 24 They are asking you specifically.</p>

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<p>1 THE WITNESS: I can't do that 2 without spending a lot of time on 3 documents. 4 Q What documents would you look 5 at, sir, since you claim to have destroyed 6 them? 7 A What documents would I like? I 8 would like all the documents from Alan 9 Heard's files that he ever sent me or 10 exchanged with me or showed with me. 11 Q Sir, I have shown you the only 12 two faxes that Dr. Alan Heard can recall 13 ever sending you at home? 14 A Well, I'm just saying -- 15 Q Are these -- excuse me. Are 16 those two faxes that Dr. Heard, the only 17 two faxes he can recall sending you -- he 18 doesn't deny sending you documents or 19 sending you faxes. 20 A Documents. I haven't seen a 21 document yet. 22 Q I don't know -- Yeah, he sent 23 you two. We have marked them. We have 24 marked them, didn't we?</p>	<p>1 report; does it? 2 A I don't have that recollection 3 today. 4 Q You don't have it in your diary? 5 A I have the practice outlined in 6 the diary. 7 Q You don't have -- 8 A I don't have the specific report. 9 Q There is not a shred of evidence 10 to implicate Dr. Heard in what you have 11 claimed and disparaged him about? 12 A I haven't disparaged Alan Heard 13 about anything. I have told the truth. 14 Q The truth, sir -- the truth, sir 15 is Dr. Heard doesn't edit scientific 16 reports except for scientific reasons. 17 Isn't that the truth? 18 A I don't believe that's true. 19 But we can find that out. If you can 20 provide me the draft reports and you can 21 provide me all the paperwork, I will go 22 through it and I will tell you explicitly 23 which documents, and all you have 24 presented to me today is the final summary</p>
Page 1236	Page 1238
<p>1 A I'm sure you are never going to 2 find them. 3 Q Well, sir, Alan Heard is not 4 here to defend himself. 5 A Why don't we bring him here 6 then? 7 Q Because this is a deposition of 8 you. It's your claims. He never claimed 9 to do any of this. You are the one. In 10 fact, until today, you were impugning 11 Kendrick Wells. It's only today that now 12 you have shifted from Kendrick Wells and 13 now you are impugning Dr. Heard. 14 The only reason we are asking 15 you these questions, sir, is you are 16 impugning his reputation. And you are 17 claiming that he did this editing. And, 18 sir, you don't have a shred of evidence to 19 say that. 20 Not even your own diary that you 21 wrote after the, that you wrote supposedly 22 contemporaneously. Not even that has any 23 evidence of Dr. Heard changing a document, 24 editing a document, a scientific research</p>	<p>1 report. 2 Q Sir, your testimony in this 3 action and your claims have changed 4 dramatically from day-to-day. You claimed 5 on 60 Minutes that reports were kept from 6 you. You claimed on 60 Minutes that 7 lawyers vetted and kept reports from you. 8 You claimed on 60 Minutes that lawyers 9 edited reports. 10 Today you have testified that 11 you got abstracts of all the reports. 12 Today you have testified that you could 13 have called various people in the 14 organization in the U.K. and got those 15 reports. 16 Today you have testified that 17 Alan Heard was the one who edited reports. 18 Your testimony, your claims and your 19 testimony have been at odds, sir, and you 20 keep shifting the grounds. 21 We have given you the evidence 22 that we have that you received semi-annual 23 reviews of all the research done at the 24 U.K.</p>

<p style="text-align: right;">Page 1239</p> <p>1 We have given, you, sir, what we 2 have to demonstrate that you have called 3 and have received reports from the U.K. to 4 you at Brown & Williamson, without any 5 lawyer interference, no attorney-client 6 stamp, nothing. Direct from them to you. 7 You, sir, have now made your other claims 8 that we haven't yet to find a shred of 9 evidence for, and have not been able to 10 come up with one shred of evidence to 11 implicate Dr. Heard in the practice you 12 claim he was engaged in. Isn't that 13 correct? 14 A. No. No, no. 15 Q. Okay. Name the shred of 16 evidence. 17 A. I cannot at this time. 18 Q. Then you can't. 19 MR. ALDOCK: There was a 20 20-minute speech you asked him to sign 21 onto. He said no. He agrees he cannot 22 present evidence to substantiate the 23 practice and policy that he knew existed, 24 he agrees to that.</p>	<p style="text-align: right;">Page 1241</p> <p>1 MR. ALDOCK: To sit in the 2 middle of a deposition on the fourth day 3 and read is one thing. 4 THE COURT: It's their 5 deposition. 6 MR. ALDOCK: Well, they're 7 entitled to do it. He can't do that now. 8 MR. SHEFFLER: Why can't he do 9 that now? 10 MR. ALDOCK: I couldn't do that 11 now. 12 THE COURT: If it's so 13 significant that he is alleging that some 14 of these documents have been changed, can 15 he not look through there now and see -- 16 MR. ALDOCK: He doesn't say 17 these documents have been changed. What 18 he says is that the policy and practice 19 was such that documents came in and things 20 were left out. 21 THE COURT: Can you say, 22 Dr. Wigand, that none of these documents 23 and none of these documents were altered. 24 THE WITNESS: I can't say that,</p>
<p style="text-align: right;">Page 1240</p> <p>1 THE COURT: He is saying he 2 cannot, he keeps saying at this time and 3 the obvious danger as we all know as 4 lawyers is on the morning -- on the day of 5 trial, unlikely he will name documents and 6 they won't have time -- this is their 7 discovery opportunity. They should be 8 able to discover it now so they can defend 9 against that charge. If he comes up on 10 day of trial and now my memory is much 11 better and I can name document A, B, C, D, 12 E -- 13 MR. SHEFFLER: Well, let me ask 14 the question this way. 15 MR. ALDOCK: The problem, your 16 Honor, was in part compounded by them. We 17 asked for the documents and we couldn't 18 get them. 19 MR. SHEFFLER: Oh, wait a 20 minute -- 21 MR. ALDOCK: If that would 22 refresh his recollection -- 23 THE COURT: They have offered him 24 whatever time he --</p>	<p style="text-align: right;">Page 1242</p> <p>1 your Honor, either way, I really can't. I 2 need to see -- this is a final document. 3 This is a final summary. It was done 4 consistent. These documents were done 5 consistent -- 6 MR. SHEFFLER: It was so 7 consistent, yet you can't name one? 8 THE WITNESS: May I finish 9 please? These documents were produced 10 consistent with a policy -- 11 THE COURT: When you use the 12 word "consistent," are you saying -- 13 because you said two different things 14 there. Are you saying that these were 15 consistently changed, consistently 16 altered? Would that include the majority 17 of these documents? 18 THE WITNESS: Some of them may 19 have. I can't point out the specific 20 document. Some of them may not have been 21 changed at all. Some of them clearly may 22 not have been changed at all. But these 23 documents that were produced in September 24 of 1991 had an existing policy. The</p>

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<p>1 existing policy -- 2 MR. SHEFFLER: Your Honor -- 3 MR. ALDOCK: You answer the 4 Judge's question. 5 THE WITNESS: The existing 6 policy -- 7 THE COURT: We are not talking 8 about the policy. We are trying to get 9 back to specifics. They want you to name 10 any document, just one, if you will? 11 THE WITNESS: I cannot do that 12 at this time. All I can tell you -- 13 THE COURT: It's always at this 14 time, "at this time," leaves them up 15 against a trial date. 16 MR. ALDOCK: I don't know, your 17 Honor, they have, at this deposition, 18 established that he believes there was a 19 policy and a practice and he is confident 20 that it was done -- 21 THE COURT: We have eliminated 22 the policy and practice. 23 MR. ALDOCK: But he can't 24 produce any -- he can't produce any --</p>	<p>1 entitled to ask you specifically, were any 2 of those documents altered. 3 Now we are going to get on with 4 it, folks. I have answered. I'm not 5 going to change my mind. Take ten and 6 look it over. 7 THE VIDEOGRAPHER: We are going 8 off the record. The time is approximately 9 2:16. 10 (Recess taken.) 11 THE COURT: Back on the record. 12 THE VIDEOGRAPHER: Back on the 13 record. The time is approximately 2:34. 14 THE COURT: Okay, now counsel, 15 let's try something here. Various 16 documents have been assembled here. Do 17 you want to go through the listing of 18 this? I think Mr. Aldock wants to write 19 them down anyway. 20 MR. WALLACE: We have given Mr. 21 Wigand the B.A.T. 1990 and 1991 work 22 programs. And the semi-annual review 23 notes as follows: September '89 through 24 February '90; March '90 through 8-90;</p>
Page 1244	Page 1246
<p>1 THE COURT: We are not -- they 2 want to talk about specifics, I have 3 answered that ad infinitum. 4 MR. ALDOCK: He has agreed that 5 he can't, as he sits here today, name a 6 document that consistent with that 7 practice he knows was edited and they will 8 have that at trial because they have 9 established that here. 10 THE COURT: They are going to 11 get it now in the discovery, period. 12 MR. ALDOCK: But he's 13 admitted -- he can't give him something 14 that doesn't exist. 15 THE COURT: Then they have 16 offered him the time to look them over. 17 We are going to do it. Let's get on with 18 it. 19 Look over the documents. 20 THE WITNESS: How would you 21 like me to do this? 22 THE COURT: Start looking. 23 Let's go off the record and take a break 24 and you look at some documents. They are</p>	<p>1 September '90 through February '91. 2 MR. ALDOCK: Wait a minute. 3 September '90, February '91, right? 4 MR. WALLACE: March '91 through 5 August '91. September '91 through April 6 '92. 7 MR. ALDOCK: April '92. 8 THE COURT: Okay. And that is 9 these things assembled here in front of 10 Dr. Wigand; is that right? 11 MR. WALLACE: Yes, sir. 12 Actually, one of the items was marked as 13 an exhibit. So we have simply taken -- 14 MR. ALDOCK: Okay. One is not 15 there but somewhere else? 16 MR. WALLACE: No, it's there. 17 They are all there. 18 MR. ALDOCK: It's there, it's 19 the exhibit. 20 MR. WALLACE: It's all in a pile. 21 MR. ALDOCK: I see, right. I 22 see, okay. 23 THE COURT: How would you label 24 these? What are they? Are they</p>

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<p style="text-align: right;">Page 1247</p> <p>1 summations of studies?</p> <p>2 MR. SHEFFLER: Those are the</p> <p>3 abstracts, the scientific summaries or in</p> <p>4 scientific lexicon, they are called</p> <p>5 abstracts --</p> <p>6 THE COURT: Okay.</p> <p>7 MR. SHEFFLER: -- of the</p> <p>8 research. Those are the reviews of the</p> <p>9 research which set forth briefly a</p> <p>10 summary, the methodology used, a brief</p> <p>11 discussion, and the conclusion. In some</p> <p>12 instances where the project is ongoing it</p> <p>13 simply reports the progress.</p> <p>14 That is the report, as I believe</p> <p>15 Mr. Wigand has previously testified, of</p> <p>16 the research projects that were being done</p> <p>17 at Southampton at that time.</p> <p>18 THE COURT: Okay. Dr. Wigand,</p> <p>19 if you were to take the time now or</p> <p>20 whenever and look over all of these</p> <p>21 documents, is there any possibility that</p> <p>22 you could then name any of those documents</p> <p>23 as among those altered?</p> <p>24 THE WITNESS: I believe I can,</p>	<p style="text-align: right;">Page 1249</p> <p>1 How long would you need to go</p> <p>2 through all those? The starting point is,</p> <p>3 if you were to tell me, no, I cannot look</p> <p>4 at these and that would not refresh my</p> <p>5 memory, that's not, it's not possible to</p> <p>6 name a document by looking at these.</p> <p>7 There is no use even reading all those is</p> <p>8 the way I would look at it.</p> <p>9 But if you say, yes, in looking</p> <p>10 at these it's possible one of them would</p> <p>11 flag your memory, jog your memory, and</p> <p>12 then you could say, that is one of the</p> <p>13 documents that was altered. Then it's</p> <p>14 worth looking at those.</p> <p>15 THE WITNESS: Your Honor,</p> <p>16 clearly, this is something I had -- it's</p> <p>17 more than what I came in here today</p> <p>18 prepared. I have not read these documents</p> <p>19 in years.</p> <p>20 THE COURT: I appreciate that.</p> <p>21 THE WITNESS: And it's clear</p> <p>22 that a very good starting point for me to</p> <p>23 go through these documents. And I believe</p> <p>24 once I go through them, it should jog my</p>
<p style="text-align: right;">Page 1248</p> <p>1 sir.</p> <p>2 THE COURT: I mean, with these</p> <p>3 you can do that?</p> <p>4 THE WITNESS: Yes, if I have an</p> <p>5 opportunity, a reasonable opportunity to</p> <p>6 go through these documents carefully. I</p> <p>7 mean, read through them, put them down for</p> <p>8 a while, and then pick them up again for a</p> <p>9 while and read them through again, I am</p> <p>10 sure I can pick out the document, specific</p> <p>11 document and subject area.</p> <p>12 THE COURT: And how long would</p> <p>13 that take? Ballpark figure. I mean, I'm</p> <p>14 not going to totally hold you to it. What</p> <p>15 I am trying to consider here is, Mr.</p> <p>16 Milliman said, and he said it off the</p> <p>17 record, and I said let's put it off the</p> <p>18 record. That he wants to move or wants me</p> <p>19 to request, however he said it, for</p> <p>20 additional time to take the deposition,</p> <p>21 which I assume would not be next week</p> <p>22 because everybody has plans for at least</p> <p>23 the immediate future. So it would have to</p> <p>24 be some time off.</p>	<p style="text-align: right;">Page 1250</p> <p>1 memory.</p> <p>2 THE COURT: All right.</p> <p>3 MR. ALDOCK: Your Honor, why</p> <p>4 don't I make a -- I have a narrow proposal</p> <p>5 to address your Honor's concerns.</p> <p>6 THE COURT: I'm sorry. And then</p> <p>7 on the other hand, if there was a document</p> <p>8 request, would Brown & Williamson then be</p> <p>9 prepared to say, this is the extent of the</p> <p>10 documents that would be furnished?</p> <p>11 MR. ALDOCK: I think they would</p> <p>12 give us more, wouldn't they, if we made a</p> <p>13 full document request?</p> <p>14 THE COURT: In regard to this</p> <p>15 issue. Not other documents but in regard</p> <p>16 to the issues, in regard to the issues of</p> <p>17 the documents that he contends were</p> <p>18 altered.</p> <p>19 MR. ALDOCK: Yes. There has got</p> <p>20 to be more documents than that. When we</p> <p>21 are allowed to make a document request for</p> <p>22 research materials that were available to</p> <p>23 him or that he got, from Southampton, it's</p> <p>24 going to be bigger than that, or is it</p>

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<p style="text-align: right;">Page 1251</p> <p>1 not?</p> <p>2 MR. SHEFFLER: Well, it depends</p> <p>3 how you define research. These are the</p> <p>4 research projects. These are the reviews</p> <p>5 of the research projects.</p> <p>6 MR. ALDOCK: These are the</p> <p>7 summaries. We are going to ask him --</p> <p>8 when we are allowed to make a document</p> <p>9 request, we are going to ask for all</p> <p>10 documents, among other things, all</p> <p>11 documents from Southampton that were</p> <p>12 received by him. That's going to be</p> <p>13 broader than that.</p> <p>14 MR. SHEFFLER: That's true.</p> <p>15 MR. ALDOCK: That's what we would</p> <p>16 ask for if we were allowed to ask.</p> <p>17 THE COURT: I'm not sure where</p> <p>18 this --</p> <p>19 MR. ALDOCK: My thought was</p> <p>20 this, your Honor --</p> <p>21 MR. SHEFFLER: Your Honor, let</p> <p>22 me respond to that for a minute. The</p> <p>23 problem is, of course, all research</p> <p>24 documents he received at Brown &</p>	<p style="text-align: right;">Page 1253</p> <p>1 edited at Brown & Williamson to you?</p> <p>2 A. No.</p> <p>3 Q. Okay. So, if Mr. Aldock --</p> <p>4 THE COURT: There is a hold there.</p> <p>5 You say -- he can ask you about it at home</p> <p>6 and you said, no, implying that you got</p> <p>7 them at places other than at your home.</p> <p>8 THE WITNESS: Yes, sir.</p> <p>9 Q. But not at Brown & Williamson.</p> <p>10 So they wouldn't be in Brown &</p> <p>11 Williamson's possession.</p> <p>12 THE COURT: Oh, I see.</p> <p>13 MR. ALDOCK: What we are</p> <p>14 suggesting, your Honor, is that if we were</p> <p>15 doing memory jogging, and so, if we saw</p> <p>16 all the research materials, I don't know</p> <p>17 how to frame the document request as I sit</p> <p>18 here, that came across his desk, he would</p> <p>19 look at those and he would say the Heard</p> <p>20 documents that I saw, that I talked about,</p> <p>21 that he told me I couldn't have in this</p> <p>22 country, related to that study or that</p> <p>23 study. And that's the hope one would have.</p> <p>24 THE COURT: Just reading these</p>
<p style="text-align: right;">Page 1252</p> <p>1 Williamson purportedly aren't the ones he</p> <p>2 is saying Alan Heard edited.</p> <p>3 You see, as I understand his</p> <p>4 testimony, and I realize it's changed a</p> <p>5 number of times, but the latest edition of</p> <p>6 his testimony is that the person who</p> <p>7 edited documents was Alan Heard and he</p> <p>8 sent these documents to him.</p> <p>9 As I understood it, he sent it</p> <p>10 to him at his home. Now, he also said he</p> <p>11 destroyed them so, therefore --</p> <p>12 THE COURT: You were shaking</p> <p>13 your head no.</p> <p>14 THE WITNESS: No, I don't think</p> <p>15 that's the only place I got documents from</p> <p>16 Alan Heard.</p> <p>17 Q. Okay. So you got some of these</p> <p>18 edited documents at Brown & Williamson?</p> <p>19 A. No, what I got from Alan</p> <p>20 Heard --</p> <p>21 Q. Now, let me do this. You didn't</p> <p>22 get -- did you get edited documents from</p> <p>23 Alan Heard at Brown & Williamson? Did</p> <p>24 Alan Heard send you documents that he</p>	<p style="text-align: right;">Page 1254</p> <p>1 documents here that are in front of him</p> <p>2 now --</p> <p>3 MR. ALDOCK: Would be a good</p> <p>4 start.</p> <p>5 THE COURT: -- would possibly</p> <p>6 jog his memory. So I think we owe him the</p> <p>7 time to look at this, which then leads to</p> <p>8 Mr. Milliman's request for additional</p> <p>9 discovery time which I would strongly</p> <p>10 recommend to Judge Mershon.</p> <p>11 MR. SHEFFLER: Right. Let me</p> <p>12 make a proposal in that regard, your Honor.</p> <p>13 MR. ALDOCK: But your Honor said</p> <p>14 that the evil you were concerned with --</p> <p>15 scratch evil. The problem you were</p> <p>16 concerned with, was that if he says he</p> <p>17 doesn't remember something at this time</p> <p>18 and he remembers it at trial, that would</p> <p>19 be unfair. And I agree with that.</p> <p>20 THE COURT: All right.</p> <p>21 MR. ALDOCK: So my proposal is</p> <p>22 that we be allowed to do our document</p> <p>23 discovery, and they be allowed to have</p> <p>24 discovery prior to trial if he contends</p>

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<p style="text-align: right;">Page 1255</p> <p>1 that he has found anything in there that 2 jogs his memory. Because then they would 3 be not being surprised. 4 If he contends that after we do 5 our document discovery that anything jogs 6 his memory in that regard, they get to 7 probe that at a live deposition before 8 trial. That would be fair. 9 THE COURT: Educate me a little 10 bit. Does the, does the discovery 11 limitation come from this court or from 12 the Federal Court or the Florida Court or 13 the Mississippi Court? Where does that 14 come from? 15 MR. ALDOCK: The discovery 16 limitation is, it is narrow. I believe it 17 has now expired. The discovery limitation 18 came from Judge Mershon. And what he said 19 was, until this deposition takes place we 20 will not be allowed to take any 21 discovery. Now, that it has taken place, 22 I presume we will be allowed to take 23 discovery. 24 MR. MILLIMAN: That's not true.</p>	<p style="text-align: right;">Page 1257</p> <p>1 We attempted to take this man's 2 deposition on an expedited basis back on 3 November the 22nd of 1995. November 22nd. 4 We have tried -- so this man has known for 5 seven months, nine months, that his 6 deposition was going to be taken. 7 This man has bragged in the news 8 that he has five sets of lawyers, five. 9 This is not some poor unrepresented man. 10 He has got Richard Scruggs, he has got Ron 11 Motley, he has now Shea & Gardner, and who 12 else knows. They have had nine months to 13 prepare this man for this deposition. 14 He had been ordered by Judge 15 Mershon to appear for a meet and confer 16 session. 17 Well, first go back. On 18 November 28, Judge Knopf, before he was 19 elected to the Court of Appeals, we tried 20 to get Judge Knopf to set a deposition. 21 Judge Knopf said I shouldn't have to do 22 that, lawyers ought to be able to agree on 23 a date, you guys agree on a date. 24 We tried to take his deposition</p>
<p style="text-align: right;">Page 1256</p> <p>1 THE COURT: Would Brown & 2 Williamson -- I'm trying to balance the 3 table here. Y'all have said, may 4 specifically ask him about a document or 5 documents that he contends have been 6 altered. And you are asking for 7 additional time to take discovery. 8 Would it not balance the table 9 to say, all right, we will give you the 10 various documents, let him read them, we 11 will set a time, not today, set a time 12 somewhere in the future for additional 13 discovery and go back at it? And after 14 looking at those, if he can name 15 documents, okay, if he can't name anymore, 16 any documents, okay. However it turns out? 17 MR. MILLIMAN: No, your Honor, 18 that won't work because Mr. Aldock has not 19 been -- Mr. Aldock has not been in this 20 case from the beginning. And I think 21 Judge Mershon understands. And the reason 22 he entered a discovery limitation -- Judge 23 Mershon fully understands what's happened 24 in this case.</p>	<p style="text-align: right;">Page 1258</p> <p>1 with Mr. Doheny. Mr. Doheny told us -- 2 this is going to be a little long but it's 3 important to understand the history. 4 Mr. Doheny told us that he was trying -- 5 the next day, that he was trying to get a 6 hold of Wigand to arrange a meeting so 7 that we could sit down and talk and go 8 over these things. 9 He then told me at 11:00 o'clock 10 in the morning, Jim, I think Wigand is in 11 Mississippi. I don't know where he is. 12 After telling us for three times that 13 Wigand would meet with us, Doheny calls me 14 and says, I think he is in Mississippi. 15 I have had fights with Frank 16 Doheny, but I have never ever questioned 17 the integrity of Frank Doheny. And I 18 think this man flew the coupe on his own 19 lawyer. 20 He showed up the next day in 21 Pascagoula, Mississippi without documents 22 and he gave a deposition, sealed, he gave 23 it. He didn't need all these documents. 24 He made allegations, your Honor, that you</p>

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<p>Page 1259</p> <p>1 have heard about. He didn't need to sit 2 down and review these documents to make 3 these charges and these allegations. 4 And he made that -- and they 5 gave us, well, you can meet and confer, 6 you have got an hour. 7 Judge Mershon held a hearing and 8 said that was unreasonable, that did not 9 comply with his obligations under the 10 agreement. We come back. We again file a 11 motion to take a deposition in December. 12 We have a motion to compel in December. 13 Judge Mershon spends two hours meeting 14 with the lawyers. 15 They filed a motion for 16 protective order. In December 5th, Frank 17 Doheny, Frank Doheny again, agrees, they 18 agree that this man will appear on 19 Wednesday, December the 7th at 9:00 20 o'clock a.m. in Frank Doheny's office. 21 There is an agreement made by 22 counsel with Judge Mershon. Judge Mershon 23 issues an agreed order the next day. This 24 man doesn't show up. He doesn't show up</p>	<p>Page 1261</p> <p>1 deposition. 2 And Frank Doheny -- actually at 3 the December 5th hearing Frank Doheny 4 tells the judge, Judge, we don't need 5 discovery, we are filing a motion that 6 will be dispositive. When you get our 7 motion this case is over. You will 8 dismiss the complaint. That's 9 interesting. 10 Do you know what they filed? 11 They filed a motion to dismiss for a 12 violation of Rule 8, that we didn't file a 13 short and plain statement showing we are 14 entitled to relief. It took Judge Mershon 15 about five seconds to get rid of that one. 16 We have tried to get the 17 deposition. And Judge Mershon finally 18 ruled that we were entitled -- since we 19 have been trying for nine months to get 20 this man, that we were entitled to take 21 this deposition before they had any 22 discovery. That it would be inherently 23 unfair for them to use the nine months of 24 delays that they have used. And they have</p>
<p>Page 1260</p> <p>1 in response to Judge Mershon's direct 2 order. 3 And they say, well, we filed a 4 motion in the Supreme Court. They never 5 got a stay of the order, which is required 6 under Kentucky law. They never got a stay 7 of that order. They say they are not 8 going to show up. 9 We show up at Mr. Doheny's 10 office. Mr. Doheny -- and this is on the 11 record. Mr. Doheny says, we will do 12 whatever the Supreme Court tells us we 13 have to do. The Supreme Court rules 14 against them. 15 And what do they do? The next 16 thing they do, Judge, is they remove the 17 case to Federal -- no, the next thing they 18 do, we end up with Washington. That's all 19 I'm going to say about that. 20 But then they remove the case to 21 Federal Court. To Federal Court. Judge 22 Simpson threw it back in quite honestly 23 record time. Then they file a motion. We 24 have another hearing to take this man's</p>	<p>Page 1262</p> <p>1 used change of counsel as excuses, they 2 have used violations of court orders as 3 excuses, Judge Mershon knows this, there 4 are contempt motions pending that will be 5 heard. 6 And his approach was that we 7 could complete our discovery -- because 8 there is a restraining. This has to be 9 one of the longest restraining orders in 10 history. There hasn't been a hearing on a 11 temporary injunction yet. 12 And we were entitled to our 13 discovery. We are entitled to examine this 14 man before they did any discovery. 15 He thought this deposition could 16 be completed in a couple days. I think we 17 have very clearly seen that it cannot be 18 completed. On Monday, quite frankly, we 19 found out about other documents. 20 This man testified there were 21 documents put over the transom. And I 22 will say further for the record, the 23 videotape clearly shows that his counsel 24 gave him that answer.</p>

<p style="text-align: right;">Page 1263</p> <p>1 When the question was asked, if 2 you listen to the videotape, Ms. 3 Wertheimer whispered in his ear "over the 4 transom". He then repeated "over the 5 transom". 6 That is extraordinarily 7 unprofessional for a lawyer to whisper the 8 answer to the client and then the client 9 repeat the answer. It's on the tape. It 10 can be heard. 11 I think Judge Mershon intended 12 for us to be able to complete this 13 deposition and probe this man and his 14 allegations before any discovery. And I 15 believe that Judge Mershon will continue 16 to adhere to that. And I would -- he is 17 going to be back July 29th and I would 18 recommend we put this matter on his 19 docketed for July the 29th, to continue 20 this matter immediately, and you make 21 whatever recommendation you feel 22 appropriate to make. 23 I don't believe that we 24 should -- what they are looking for again,</p>	<p style="text-align: right;">Page 1265</p> <p>1 and I will let Judge Mershon interpret his 2 own order. The question right now though, 3 to be more practical is, y'all have 4 offered to him the opportunity to sit here 5 as long as it takes to go through this. 6 Do you want to do that because it may be 7 5:00 o'clock tomorrow afternoon? 8 This is a stack about six inches 9 high or so. I still say you are entitled 10 to try to pin him down to one, to a 11 specific document or documents that he 12 says have been altered so you can go back 13 and try, through the existing paper, to 14 see whether or not that is correct or not. 15 But -- 16 MR. SHEFFLER: Your Honor, I 17 understand. I understand. 18 THE COURT: So it's really a 19 practical question. I have no trouble at 20 all. I mean, just from the involvement of 21 this case in recommending to Judge Mershon 22 that you have more time for the 23 deposition. I mean, it's a very 24 involved -- you said yesterday you have</p>
<p style="text-align: right;">Page 1264</p> <p>1 Judge -- they are looking for delay. It's 2 more delay. 3 THE COURT: I can answer in a 4 hurry that obviously I have no authority 5 to change Judge Mershon's order if it came 6 from this court in regard to the exchange 7 of discovery. If that's his order, it 8 stands. So any thoughts that I may have 9 had of asking you all to go ahead and 10 exchange something, forget it unless you 11 do it willingly. 12 MR. MILLMAN: Your Honor, what 13 we're going to do -- 14 MR. ALDOCK: We may be wrong 15 but -- we have a difference of agreement 16 about what that order said. I read that 17 order as saying this deposition would take 18 place -- 19 THE COURT: Well, you are going 20 to have to go back to Judge Mershon on 21 that. 22 MR. ALDOCK: Right, right, I 23 agree with that. 24 THE COURT: There is an order</p>	<p style="text-align: right;">Page 1266</p> <p>1 only gotten through about a third of 2 the -- 3 MR. SHEFFLER: He's made a lot 4 of claims, your Honor, and they keep 5 shifting. And one of the things that is 6 of grave concern to me, is that new claims 7 keep popping out and old claims keep being 8 modified. 9 THE COURT: I understand. 10 MR. SHEFFLER: Now, we have 11 implicated someone who we have not heard 12 him implicate before. He said today, a 13 very serious charge against a person who I 14 do know and I regard highly and I'm sure 15 has the high regard of many. 16 I believe that that claim should 17 be rebutted and rebutted quickly. We have 18 had -- we have been thwarted for many 19 months in trying to get this man's 20 deposition. If we do not at least try to 21 run this down -- 22 THE COURT: You don't have to 23 sell me on the seriousness. I'm the one 24 who stopped the proceedings this morning</p>

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1 and asked him if he wanted to confer with
2 counsel about these new allegations he is
3 making, because that person has a
4 reputation too and may guard it highly and
5 take offense of what has been said here.

6 MR. SHEFFLER: I'm sure he
7 will.

8 THE COURT: But -- I'm not going
9 to tell the witness what to say. That's
10 not my role. He can say what he wants to
11 say. I just want him to realize the
12 consequences of it. And I am telling
13 y'all that Brown & Williamson will have
14 the opportunity to try to pin him down
15 prior to trial as to what documents he
16 says have been altered. And so far he can
17 name none as I understand the testimony.

18 MR. SHEFFLER: Your Honor, the
19 problem is that Mr. Wigand has no
20 compunctions about saying these things as
21 well publicly, regardless of court orders,
22 regardless of promises he has made in
23 agreements, regardless of anything.

24 He continues to make these

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1 this is. In this stack are the titles of
2 the reports, and a description of the
3 reports. It's a summary.

4 If I read a book back in 1992, I
5 certainly probably would be hard-pressed
6 to recall every book I read. If I read a
7 book that somebody fraudulently edited, I
8 think I probably would remember it. But
9 maybe I would want something to jog my
10 memory.

11 If I saw the summary of it again
12 and the title, that should do it.

13 THE COURT: Start reading. Do
14 you want to stay on though and have him
15 examine each document and ask specifically
16 or do you want him to read all of them and
17 then come back and say whether or not any
18 of them have jogged his memory?

19 MR. SHEFFLER: Why don't we do
20 it one at a time, sir, and see if they do.

21 THE COURT: All right. Do you
22 have the order of these that you can
23 follow along or you can stand over here so
24 we don't have to get so many copies around

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1 claims, new claims, amended old claims, on
2 an ongoing basis. And this is our
3 opportunity to try to find the truth.

4 And we have been trying to do
5 that. And if we have to have him sit here
6 till 5:00 o'clock, let's let him sit here
7 until 5:00 o'clock. I want him to look at
8 these documents. I want him to identify
9 them for us.

10 THE COURT: Okay. There you go
11 We don't need to stay on the record,
12 unless you are going to ask him questions
13 as he goes along. Would it help to go
14 through each one of these separately and
15 say read such and such a document and then
16 ask him, does that jog your memory?

17 MR. ALDOCK: Your Honor, given
18 that stack, I think he has got to be given
19 the opportunity to think about it. I just
20 don't think -- we are trying to refresh
21 recollection with, I don't know, are they
22 500 pages of documents?

23 MR. SHEFFLER: Your Honor -- wait
24 a minute. Your Honor, let me explain what

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1 the table. However you want to do it.

2 MR. ALDOCK: Your Honor, is he
3 allowed to -- I mean, are we going to sit
4 here -- is he allowed to take them and
5 read them?

6 THE COURT: Right now.

7 MR. ALDOCK: Right now on the
8 record 500 pages of abstracts. Let's see
9 what jogs his memory.

10 THE COURT: Please get started.
11 Q. Starting with the 1990 work
12 program, sir.

13 A. Is that the latest one? I would
14 like to do these in sequence. '91, this
15 is 1990. Do you have anything after --
16 do you have the '89 program?

17 Q. I thought you said this happened
18 in 1990?

19 A. Okay. I'm just looking for
20 something that would jog my memory. And I
21 would like to look at the whole continuum.

22 Q. Would you like to look at the
23 1989? Would that jog your memory as to
24 what was written in 1990?

<p style="text-align: right;">Page 1271</p> <p>1 A. It may.</p> <p>2 Q. Well, we will get 1989. Your</p> <p>3 claim, thought, sir, was the report was</p> <p>4 edited by Mr. Heard sometime after 1990,</p> <p>5 wasn't it? Wasn't it?</p> <p>6 A. I believe what I said is Mr.</p> <p>7 Heard showed me edited reports, sent me</p> <p>8 edited reports after 1990, January of</p> <p>9 1990.</p> <p>10 Q. All right.</p> <p>11 A. Am I allowed to write on these?</p> <p>12 THE COURT: They may become</p> <p>13 exhibits. Do you want to take a yellow</p> <p>14 pad and make notes?</p> <p>15 Q. You can put a --</p> <p>16 THE COURT: Sticky.</p> <p>17 Q. May I ask what page you are on,</p> <p>18 sir?</p> <p>19 MR. ALDOCK: Can he at least</p> <p>20 have the time to do it without every time</p> <p>21 he makes a note asking him what he is</p> <p>22 writing down? This is not fair.</p> <p>23 THE COURT: All right.</p> <p>24 Sustained.</p>	<p style="text-align: right;">Page 1273</p> <p>1 THE COURT: See y'all in the</p> <p>2 morning.</p> <p>3 THE VIDEOGRAPHER: We are off the</p> <p>4 record at 4:40.</p> <p>5 -----</p> <p>6 Thereupon, the deposition was</p> <p>7 adjourned at 4:40 p.m.</p> <p>8 -----</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 1272</p> <p>1 THE VIDEOGRAPHER: End of time.</p> <p>2 The videographer is going to swap out</p> <p>3 tapes. The time is approximately 3:32.</p> <p>4 MR. WALLACE: Let the record</p> <p>5 reflect at this point that the deponent</p> <p>6 has left the room at approximately 3:32.</p> <p>7 THE VIDEOGRAPHER: The beginning</p> <p>8 of next tape. The time is 3:33.</p> <p>9 -----</p> <p>10 (The witness continues to read</p> <p>11 documents.)</p> <p>12 -----</p> <p>13 THE COURT: Am I correct in</p> <p>14 understanding it's the will of the group to</p> <p>15 disband for today?</p> <p>16 MR. ALDOCK: Yes, your Honor.</p> <p>17 Yes, your Honor.</p> <p>18 THE COURT: What time in the</p> <p>19 morning? Quarter till 9:00 to be back</p> <p>20 here?</p> <p>21 MR. SHEFFLER: Quarter to 9:00</p> <p>22 will be fine.</p> <p>23 MR. ALDOCK: Quarter to 9:00 will</p> <p>24 be fine.</p>	<p style="text-align: right;">Page 1274</p> <p>1 CERTIFICATE</p> <p>2 I, Thomas F. Runfola, a Registered</p> <p>3 Professional Reporter, do hereby certify</p> <p>4 that I reported the deposition of Jeffrey S.</p> <p>5 Wigand, and that the foregoing transcript of</p> <p>6 such proceedings is a full, true and correct</p> <p>7 transcript of my stenotypy notes made to the</p> <p>8 best of my ability.</p> <p>9 I do further certify that I was called</p> <p>10 there in the capacity of a Court Reporter,</p> <p>11 and am not otherwise interested in this</p> <p>12 proceeding.</p> <p>13</p> <p>14 _____</p> <p>15 THOMAS F. RUNFOLA, Registered Professional Reporter</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 DEANNA S. CURTIS, Registered Professional Reporter</p> <p>20 Notary Public for the State of Kentucky.</p> <p>21 My Commission Expires: _____</p> <p>22</p> <p>23</p> <p>24</p>

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